IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3655 OF 2007
IN
ARBITRATION PETITION NO.424 0F 2006

Union of India ...Petitioner
Versus
Tolani Bulk Carriers ...Respondents

Ms S.I.Shah i/by Dr.T.C.Kaushik for the Petitioner.
Shri M.S.Doctor i/by M/s.Bhatt & Saldhana for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : SEPTEMBER 27th, 2007.

P.C.:

1. Heard the learned counsel appearing for the Petitioner in support of Notice of Motion. I have also heard the learned counsel appearing for the Respondent. The learned counsel appearing for the Respondent states that the reply filed by the Respondents to the Notice of Motion No.09 of 2007 may be treated as a reply to this Notice of Motion.

2. The Arbitration Petition has been filed by the Petitioner for setting aside the award dated 10th March, 2006 by invoking section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act). According to the case made out by the Petitioner in the Petition, the Award was received on 21st April, 2006 and therefore, the Petition lodged on

13th July, 2006 was within limitation. An objection has been raised by the Respondents contending that on 20th March, 2006 the Petitioners received a letter dated 17th March, 2006 issued by the Indian Council of Arbitration alongwith a copy of Award. A reliance has been placed in the affidavit in reply filed by the Respondents on a letter dated 31st January, 2007 issued by the Indian Council of Arbitration to the Respondents. In the said letter it is stated that alongwith letter dated 17th March, 2006 copies of the award were forwarded to the parties. It is stated that the letter alongwith the Award was forwarded to Mr.Tapan Datta, Assistant Commissioner (S), Government of India, Ministry of Chemicals and Fertilizers, Department of Fertilizers at New Delhi as well as to the counsel of the Petitioners Mr.Sameer Agarwal in his chamber at New Delhi. Alongwith the said letter, the Indian Council of Arbitration forwarded xerox copies of the documents of proof of delivery issued by M/s.Krishna Courier Service. According to the Respondents the said documents indicate that a copy of the Award was served to the Petitioners on 20th March, 2006.

3. In the present Notice of Motion i.e No.3655 of 2007, a reliance has been placed on documents annexed to Notice of Motion No.09 of 2007. The letter dated 21st

April, 2006 sent by Mr.Tapan Datta, Assistant Commissioner (S) of the Petitioner addressed to the Secretary of Indian Council of Arbitration records that a copy of the Award was not received. A request was made that the same may be handed over to the bearer of the said letter. Another letter of Mr Tapan Datta of the same date records that a copy of the award has been collected from the office of Indian Council of Arbitration through a special messenger and therefore, time of 90 days mentioned in Award would commence only from 21st April, 2006. The letter dated 25th May, 2006 sent by the counsel Mr.Sameer Agarwal to the Advocates appearing for the Respondents records that a copy of the Award was not received by the Petitioners and the same was collected by them from the Indian Council of Arbitration on 21st April 2006.

4. A reliance has been placed by the Respondents on the documents issued by Krishna Courier Service. The first document is as regards service made to Mr. Sameer Agarwal. The document shows that packet containing the letter was placed inside the door. There is no acknowledgment in writing of receipt of the said letter. The second document shows that a letter was forwarded in the individual name of Mr.Tapan Datta and there is an endorsement that the letter was delivered on 20th March,

2006. The address of Shri Tapan Datta is not mentioned in the said document. There is no acknowledgment bearing rubber stamp of inward section of any of the offices of the Union of India. The acknwoledgment is not signed by Mr Tapan Datta or anyone on his behalf.

5. On the basis of the aforesaid documents, it is not possible to accept that the counsel representing the Petitioner was served with a copy of the Award on 20th March, 2007. The Union of India were charterers/Respondents in the Arbitral Proceedings. According to the case of the Respondents a letter was dispatched to Mr. Tapan Datta on 17th March, 2006. The document on record shows that letter was not addressed to Mr. Tapan Datta in his capacity as an officer of the Union of India. There is no service of award to the office of Union of India.

6. In view of the aforesaid, the case made out by the Petitioner that copy of Award was received for the first time on 21st April, 2007 will have to be accepted. Hence there is no delay in filing the Arbitration Petition.

7. The Notice of Motion is accordingly disposed of.

JUDGE